

the accused had acted in a manner prejudicial to public safety or to the maintenance of public order. For this to be done it is necessary for knowledge to be an ingredient of the offence under sub-regulation (1).

As regards sub-regulation (3), if a person accused under sub-regulation (1) is not in possession of an identity card when arrested, that, if we were to accede to Mr. McCall's argument, might be sufficient to convict him, even though he had not the slightest idea that the person in whose company he was had a firearm in his possession (which might be in his house in another place miles away) or concealed on his person.

If the legislature intended the law to be as envisaged by Mr. McCall, then, in our opinion, they have failed to use language in Regulation 5(1) to make their intention clear not merely to the general public, but even to the Judges whose duty it is to interpret the law.

From a perusal of previous decided cases we find that the High Court has consistently acted on the principle that knowledge is an ingredient of Regulation 5(1). In our view that is correct and we so decide.

We wish to add that on the particular facts of this case the prosecution not only failed to prove that the appellant knew the other Chinese to be armed but also failed to prove any circumstances showing that the appellant had acted with that other Chinese in a manner prejudicial to public safety.

For these reasons this appeal is allowed and the conviction and sentence quashed.

Appeal allowed.

PUBLIC PROSECUTOR v. CHUA YEOH PAN.

[App. Crim. Juris. (Pretheroe, J.) May 9, 1950]

[Malacca — Criminal Appeal No. 4 of 1950]

Motor Vehicles (Construction and Use) Regulations, 1948 — Whether these regulations are ultra vires the powers of the Commissioner of Road Transport — Road Transport Proclamation (No. 17 of 1945).

The respondent in this case was charged with "being the owner of motor lorry No. S. 2852 did use the said vehicle on a public road . . ." contrary to regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948. The respondent was the registered owner of the vehicle concerned but at the time of the alleged offence the lorry was being driven by and was in charge of his servant, the driver, and respondent was not present at the time. At the trial the respondent was found not guilty and was acquitted. The Public Prosecutor appealed against this acquittal. At the hearing of the appeal and in reply to the Deputy Public Prosecutor, Mr. Sault submitted firstly that the whole of the Motor Vehicles (Construction and Use) Regulations,

1948, were ultra vires the powers of the Commissioner of Road Transport and secondly that if his first submission failed, then regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948, was ultra vires the powers of the Commissioner of Road Transport. By agreement of counsel, these two submissions were treated as preliminary objections.

Held, (1) that the Commissioner of Road Transport had power to make the regulations under section 5 of the Road Transport Proclamation, 1945; and (2) that regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948, was not ultra vires the regulation-making powers of the Commissioner of Road Transport.

Case referred to:—

(1) *Cole v. Young* (1938) 4 All. E.R. 39.

CRIMINAL APPEAL from Magistrate's Court.

H. Shepherd for the appellant.

W. H. Sault for the respondent.

Cur. Adv. Vult.

Pretheroe, J.: — The respondent was charged with "being the owner of motor lorry No. S. 2852 did use the said vehicle on a public road . . ." contrary to regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948. The respondent is the registered owner of the vehicle concerned but at the time of the alleged offence the lorry was being driven by, and was in the charge of, his servant, the driver and respondent was not present at the time. The Magistrate who heard the case found respondent not guilty of the offence charged and acquitted and discharged him. Against this acquittal the Public Prosecutor appealed on three grounds.

At the hearing the Deputy Public Prosecutor, Mr. Shepherd, informed the Court that he was abandoning the second ground of appeal. He then addressed the Court on the two remaining grounds.

In reply, Mr. Sault for the respondent, announced that his first submission was that the whole of the Motor Vehicles (Construction and Use) Regulations, 1948, were ultra vires the powers of the Commissioner of Road Transport (hereinafter referred to as "the Commissioner") and his second submission was that, if his first submission failed, then regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948, was ultra vires the powers of the Commissioner.

By agreement of Counsel these two submissions were treated as preliminary objections as, if either was successful, the appeal would at once collapse.

In support of his contention that the Motor Vehicles (Construction and Use) Regulations, 1948, were ultra vires the powers of the Commissioner Mr. Sault pointed out that the Regulations were made by the Commissioner "in exercise of the powers conferred

on him by section 4 of the Road Transport Proclamation" (No. 17 of 1945) and he submitted that there was nothing in the section which conferred power to make regulations regarding the maintenance and construction of motor vehicles. Mr. Sault was of opinion that the reference to section 4 in "the preamble" to the Regulations was probably a printer's error for "section 5" because of the reference to the approval of the High Commissioner which is required by section 5 but not by section 4. Through the courtesy of Mr. Shepherd however I have been able to inspect the original copy of the Regulations and found that the mistake is not a printer's error but appears in the original.

It is perfectly clear that section 4 of the Proclamation does not empower the Commissioner to make regulations regarding the construction, equipment or maintenance of motor vehicles and his limited powers relating to use of vehicles are defined in paragraph (c) of the section as substituted by section 3 of the Road Transport (Amendment) Ordinance, 1949.

Under section 5 of the Proclamation however power is conferred on the Commissioner, subject to the approval of the High Commissioner, to make Regulations relating to "the construction, equipment and use of motor vehicles and tractors". The position therefore is that the majority of the regulations contained in the Motor Vehicles (Construction and Use) Regulations, 1948, are *ultra vires* the powers conferred on the Commissioner by section 4 but *intra vires* the powers conferred on him by section 5. In short the Commissioner had vested in him the required powers but not by the section under which he purported to make the Regulations.

The "preamble" does not form part of any Regulations and they would be equally valid and operative if the preamble were omitted. The vital question is "has the Legislature in fact conferred the necessary powers upon" the authority concerned?

For the purpose of Mr. Sault's first submission the answer in general is that the Commissioner had the necessary powers and has validly exercised them. I have used the words "the answer in general" to make it clear that I am not deciding here that every regulation, or every part of any regulation, contained in the Motor Vehicles (Construction and Use) Regulations 1948, is *intra vires*. Mr. Sault's first submission therefore fails.

Mr. Sault's second submission was that even under section 5 the Commissioner can only make Regulations relating to the "construction, equipment and use of motor vehicles" whereas regulation 98 relates solely to maintenance. He pointed out that in *Cole v. Young*⁽¹⁾ the Court drew attention to the fact that throughout the Motor Vehicles (Construction and Use) Regulations, 1937, a clear distinction is drawn between construction, on the one hand, and use, on the other hand and submitted that our Proclamation draws a similar distinction between use, on the one hand, and maintenance, on the other hand. I am not in agreement with this submission for two reasons. Firstly, the only reference to "maintenance" in the whole Proclamation appears in paragraph (a) of section 7 which provides that "each Registrar shall . . . register and licence motor vehicles and *maintain* a register thereof". There is no reference to the maintenance of motor vehicles and consequently no distinction is drawn between use and maintenance. And secondly, regulation 98 does not relate solely to maintenance. The whole regulation is concerned with the condition of certain items of equipment when the vehicle is being used on the road. It restricts the use of vehicles and in my opinion is clearly *intra vires* the powers of the Commissioner relating to use of vehicles.

I therefore decide against Mr. Sault on both preliminary objections and will now hear him on the merits of the appeal.

Preliminary objections overruled.

